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are allowed under general law for misconduct or imperfect performance of duties. *Willard* v. *Dorr*, 29 Fed. Cas. 1277. And when a seaman in a foreign port is put ashore at his own request from a vessel equipped with a proper medicine chest and there receives medical treatment, it seems that the expenses may be so deducted. *Pierce* v. *Patton, supra.*

The decision in the *The Alector, supra,* handed down by Judge Waddill for the Federal Court of the Eastern District of Virginia, was applied to facts practically identical with those constituting the instant case and the results in the two cases are in absolute accord.

BAILMENTS—MISPLACED PROPERTY—LARCENY.—The plaintiff, while a passenger on a subway car operated by the defendant, saw a package on a seat opposite him, which had been left inadvertently by another passenger, who had alighted. The plaintiff picked up the package, and finding no name or mark upon it, took it. After he had disembarked, a railway guard inquired what he was going to do with the package. Whereupon the plaintiff replied that he would keep the package and advertise for the owner, offering to give his name and address. The plaintiff, refusing to surrender same to officials of the railway company, was placed under arrest, held for bail, and remained in a cell until the bail was furnished. The next morning he was acquitted of a charge of petit larceny. An action was instituted by the plaintiff against the railway company for false imprisonment and malicious prosecution. *Held,* the plaintiff could not recover. *Foulke* v. *New York Consol. R. Co.* (N. Y.), 127 N. E. 237.

By the general rule of the common law, one who finds and appropriates a lost chattel acquires title thereto and the right to possession thereof against all the world except the true owner. This rule of law has never been seriously questioned since the leading case of *Armory* v. *Delamirie*, 1 Strange 505, 2 Smith's Leading Cases, Hare & Wallace, 7th Am. ed., 636. Ordinarily the place where it is found does not make any difference. *Durfee* v. *Jones,* 11 R. I. 588, 23 Am. Rep. 528.

However, property voluntarily laid down and forgotten is not in legal contemplation "lost", but "mislaid"; and the owner of the place where it is left is the proper custodian, rather than the person who happens to discover it first. *State* v. *McCann,* 19 Mo. 249; *Kincaid* v. *Eaton,* 98 Mass. 139, 93 Am. Dec. 142; *State* v. *Courtsol,* 89 Conn. 564, 94 Atl. 973, L. R. A. 1916A 465.

Bailment does not necessarily and always, though generally, depend upon a contract *inter partes.* In some cases, the law, from considerations of public policy, imposes the liability of a bailee upon one who has, without private agreement, come into possession of the goods of another. It is the element of lawful possession, however created, and the duty to account for the thing as the property of another that creates the bailment. *Burns* v. *State,* 145 Wis. 373, 128 N. W. 987, 140 Am. St. Rep. 1081. It is the duty of the person upon whose premises the mislaid article is discovered to act as a gratuitous bailee for the owner, when the fact becomes known to him, and to use reasonable care for the safe-keeping of the same until the owner shall call for it. *McAvoy*

v. *Medina,* 11 Allen (Mass.) 548, 87 Am. Dec. 733; *Foster* v. *Fidelity Safe Deposit Co.,* 264 Mo. 89, 174 S. W. 376, L. R. A. 1916A 655, Ann. Cas. 1917D 798.

The bailee acquires, by virtue of the bailment, an interest in the goods bailed that he can protect by appropriate action against wrongful interference. *Chamberlain* v. *West,* 37 Minn. 54, 33 N. W. 114; *Faulkner* v. *Brown,* 13 Wend. (N. Y.) 63; *Herries* v. *Bell,* 220 Mass. 243, 107 N. E. 944, Ann. Cas. 1917A 423.

When bailed goods are stolen by a stranger, in an indictment for larceny, ownership may be laid either in the bailor or bailee, and the bailee may have replevin or detinue, so as to have the goods for the bailor at the end of the bailment. *Hooper* v. *Miller,* 76 N. C. 402; *State* v. *O'Connell,* 144 Mo. 387, 46 S. W. 175; *State* v. *Philips,* 73 S. C. 236, 53 S. E. 370; *State* v. *Moore,* 101 Mo. 316, 14 S. W. 182.

The above principles seem to be sufficient to constitute a legal ground for an accusation of petit larceny by the bailee. Whether or not the felonious intent existed is a question of fact for the jury upon the trial of the accusation.

BILLS AND NOTES—CARRIERS—BANK DISCOUNTING A DRAFT WITH A BILL OF LADING ATTACHED NOT LIABLE FOR BREACH OF SELLER'S CONTRACT.—A draft with bill of lading attached drawn by a seller on the buyer for fruit shipped was discounted by a bank. The buyer, who is plaintiff in this action, accepted and paid the draft before examining the fruit, which upon examination was found defective. Whereupon the buyer claimed misrepresentation and breach of warranty, and brought action against seller and the bank, contending the bank was substituted by the acts of the parties for the original contracting party, and being in this position, was in equity bound to refund moneys collected on the draft as improperly held by it. *Held,* the bank is not liable. *Williams* v. *National Fruit Exchange* (Conn.), 111 Atl. 197.

There is no question but that a contracting party is liable for breach of warranty. The question here is how far the bank is responsible as a contracting party, and what is its relation to the drawee of the draft.

The courts of Alabama, Mississippi, Texas and North Carolina have held that a bank discounting a draft with a bill of lading attached is bound to refund the money collected on it to the drawee of the same, when the goods are not as represented in the bill of lading and the drawee has had no opportuity to examine them before he paid the draft. *Haas* v. *Citizens' Bank,* 144 Ala. 562, 39 So. 129, 1 L. R. A. (N. S.) 242, 113 Am. St. Rep. 61; *Landa* v. *Lattin,* 19 Tex. Civ. App. 246, 46 S. W. 48; *Searles* v. *Smith Grain Co.,* 80 Mass. 688, 32 So. 287; *Marks' Sons* v. *West Tennessee Grain Co.* (Miss.), 81 So. 162; *Citizens' Bank* v. *Harpeth National Bank* (Miss.), 82 So. 329; *Finch* v. *Gregg,* 126 N. C. 176, 35 S. E. 251, 49 L. R. A. 679. But all except the Mississippi Court have since reversed this doctrine. *Landa v. Lattin, supra,* was overruled in *Blaisdell Co.* v. *Citizens' National Bank,* 96 Tex. 626, 75 S. W. 292, 62 L. R. A. 968, and also in *Tradesmen's State Bank* v. *Ft. Worth Elevators Co.* (Tex. App.), 214 S. W. 656. *Haas* v. *Citi-*